

September 20, 2000

Norwood-Dingell II:

Dems Try to Scuttle Patients' Rights Conference by Offering Even More Lawsuits

Most Americans understand that suing employers will not improve Americans' health coverage. One such American is Senator Joe Lieberman (D-CT), who last year launched a broadside against Senator Ted Kennedy's managed care reform bill (CR, p. S8598, 7/15/99):

I think, with all respect that the Democratic bill goes too far.

It opens up the system to the unlimited right to sue and creates the same prospect for the lotteries that have been going on elsewhere in the tort system. I am concerned that those ills will be repeated here — some will get rich and others, many others, will not be adequately compensated for the injuries they suffer as the result of the managed care plan decisions.

And some small businesses and individual people will be priced out of health insurance by the costs that will be added as a result of runaway judgements.

That is why, time and time again, Senate Republicans have rejected Democrat attempts to expose employers to unlimited damages, most recently the House-passed H.R. 2990, sponsored by Reps. Charlie Norwood (R-GA) and John Dingell (D-MI).

Recently, House negotiators offered what they call a "compromise" between the Senate-passed "Patients' Bill of Rights — Plus" (S. 1344) and the Norwood-Dingell bill (H.R. 2990). Backers of this "Norwood-Dingell II" made numerous claims about the bill, most of them false.

LIABILITY

Claim: Norwood-Dingell II protects employers from being sued.

Analysis: The liability provisions of Norwood-Dingell II are worse than the original bill. The so-called "compromise" contains even *more* ways to sue employers, including unlimited compensatory and punitive damages for such minor errors as

failing to provide advanced notice of a minor administrative change in the health plan.

Claim: Norwood-Dingell II caps employer liability.

Analysis: There are no caps on either the federal or state lawsuits created by Norwood-Dingell II.

APPEALS PROCESS

Claim: Norwood-Dingell II requires that the appeals process be exhausted before going to court.

Analysis: Loopholes in Norwood-Dingell II would allow trial lawyers to bypass the external review process and go straight to court.

SCOPE

Claim: Norwood-Dingell II respects the states' role in crafting health care policy.

Analysis: States must pass a law identical to Norwood-Dingell or have their health insurance regulation taken over by the Health Care Financing Administration, guaranteeing confusion and over-regulation.

ACCESS/UNINSURED

Claim: Norwood-Dingell II contains access provisions to make health insurance more affordable.

Analysis: Despite near-total agreement between the House and Senate on such access provisions as medical savings accounts and accelerating the self-employed deduction, there are no access provisions in Norwood-Dingell II. Because it expands liability, it is likely that even more people would lose their health insurance under Norwood-Dingell II than the 1.2 million estimated to lose coverage under the original bill.

Customarily, a compromise position is one that moves toward the center. That Democrats have offered legislation that moves them even further away from what the American people want suggests the last thing they want is to enact patients' rights legislation this year.

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